

UNITED STATES COURTS

Judicial Council Of The Eighth Circuit
United States Court And Custom House
1114 Market Street
St. Louis, Missouri 63101

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Lester C. Goodchild
Circuit Executive
CCAO-45

CIRCUIT COUNCIL

ADMINISTRATIVE ORDER

This will certify that the Judicial Council of the Eighth Circuit has authorized the implementation of the provisions of Section 3162, Title 18, United States Code, in their entirety, effective July 1, 1980, in the District Court of the District of Nebraska and, further, has approved the amended Speedy Trial Act Plan for that District Court.


Circuit Executive

August 11, 1980
St. Louis, Missouri

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

The Speedy Trial Planning Group appointed by this court having recommended amendments to the Speedy Trial Plan of the United States District Court for the District of Nebraska, which was approved June 13, 1978,

IT IS ORDERED that the amendments to the Speedy Trial Plan of the United States District Court for the District of Nebraska, which are attached hereto, are adopted.

Dated

July 9, 1980.

BY THE COURT

James R. Hahn
Chief Judge

John D. Horney
District Judge

Albert G. Bhaty
District Judge

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF NEBRASKA

8/19/80

Final Plan under the Speedy Trial Act of 1974, as amended.

I. Introduction

A. As required by the provisions of the Speedy Trial Act of 1974, 18 U.S.C. § 3161, et seq., the judges of the United States District Court for the District of Nebraska have adopted the following plan for the disposition of criminal offenses.

This plan achieves compliance with the Act by minimizing delay, furthering the expeditious disposition of federal criminal cases in the District of Nebraska without prejudicing the prompt and orderly processing of civil litigation by this Court, and incorporates by reference all of the findings and recommendations in the Plan for the Prompt Disposition of Criminal Cases adopted in June, 1978.

B. This plan has been adopted upon the advice and recommendation of the Speedy Trial Act Planning Committee, convened pursuant to 18 U.S.C. § 3168. The members of the Committee are the Honorable Warren K. Urbom, Chief Judge, United States District Court for the District of Nebraska; The Honorable Richard C. Peck, United States Magistrate for the District of Nebraska; Mr. Edward Warin, Esq., United States Attorney for the District of Nebraska; Mr. William L. Olson, Clerk of the United States District Court for the District of Nebraska; Mr. Thomas J. Skutt, Esq., a member of the bar of the United States District Court

for the District of Nebraska; Mr. Ronald C. Romans, United States Marshal for the District of Nebraska; Mr. Burton L. Matthies, Chief Probation Officer for the District of Nebraska; and Mr. Richard E. Shugrue, Esq., Reporter to the Committee. Additionally, the Honorable Robert V. Denney and the Honorable Albert G. Schatz, United States District Judges for the District of Nebraska, have actively participated in and contributed to the planning process.

C. Copies of the plan are available for public inspection at the office of the Clerk of the United States District Court for the District of Nebraska, United States Courthouse, Room 9000, 215 North 17th Street, Omaha, Nebraska, 68101. Copies of the Plan will be made available by the Clerk of the United States District Court for the District of Nebraska upon request.

II. Time Limits and Procedures

Pursuant to the requirements of rule 50(b) of the Federal Rules of Criminal Procedure, the Speedy Trial Act of 1974 (18 U.S.C. § 3161, et seq.) and the Federal Juvenile Delinquency Act (18 U.S.C. §§ 5036 and 5037) the judges of the United States District Court for the District of Nebraska have adopted the following time limits and procedures to minimize undue delay and to further the prompt disposition of criminal cases and certain juvenile proceedings:

1. Applicability.

(a) Offenses. The time limits set forth herein are applicable to all criminal offenses triable in this court, including cases triable by United States magistrates, except petty offenses as defined in 18 U.S.C. § 1(3). Except as specifically provided, they are not applicable to proceedings under the Federal Juvenile Delinquency Act.

(b) Persons. The time limits are applicable to persons accused who have not been indicted or informed against as well as those who have, and the word "defendant" includes such persons unless the context indicates otherwise.

2. Priorities in Scheduling Criminal Cases.

Preference shall be given to criminal proceedings as far as practicable as required by rule 50(a) of the Federal Rules of Criminal Procedure. The trial of defendants in custody solely because they are awaiting trial and of high-risk defendants as

defined in section 3164 of the Act should be given preference over other criminal cases.

3. Measurement of Time Periods. For the purposes of this section:

(1) An arraignment shall be deemed to take place at the time a plea is taken or is entered by the court on the defendant's behalf.

(2) A trial in a jury case shall be deemed to commence at the beginning of voir dire.

(3) A trial in a non-jury case shall be deemed to commence on the day the case is called, provided that some step in the trial procedure immediately follows:

4. Related Procedures.

(a) The judge to whom the case is assigned and the magistrate shall have responsibility for setting cases for trial after consultation with counsel. At the time of arraignment or as soon thereafter as is practicable, each case will be set for trial on a day certain or listed for trial on a weekly or other short term calendar.

(b) Individual calendars shall be managed so that it will be reasonably anticipated that every criminal case set for trial will be reached during the week of original setting. A conflict in schedules of Assistant United States Attorneys or

counsel for a defendant will not be ground for a continuance or delayed setting except under circumstances approved by the court and called to the court's attention at the earliest practicable time. The United States Attorney will familiarize himself with the scheduling procedures of each judge and will assign or reassign cases in such manner that the government will be ready for trial consistent with the provisions of the Speedy Trial Act of 1974.

(c) In the event that a complaint, indictment or information is filed against a defendant charged in a pending indictment or information or in an indictment or information dismissed on motion of the United States Attorney, the trial on the new charge shall commence within the time limit for commencement of trial on the original indictment or information unless the court finds that the new charge is not for the same offense charged in the original indictment or information or an offense required to be joined therewith.

(d) At the time of the filing of a complaint, indictment, or information the United States Attorney shall give written notice to the court of that circumstance and of his position with respect to the computation of the time limits.

(e) All pretrial hearings shall be conducted as soon after the arraignment as possible, consistent with the priorities of other matters on the court's criminal docket.

5. Juvenile Proceedings.

(a) Time Within Which Trial Must Commence.
an alleged delinquent who is in detention pending trial shall be brought to trial within 30 days of the date on which such detention was begun, as provided in 18 U.S.C. § 5036.

(b) Time of Dispositional Hearing. If a juvenile is adjudicated delinquent, a separate dispositional hearing shall be held no later than 20 court days after trial, unless the court has ordered further study of the juvenile in accordance with 18 U.S.C. § 5037(c).

III. Time Limits and Exclusions

1. In any case involving a defendant charged with an offense, the appropriate judicial officer, at the earliest practicable time, shall, after consultation with the counsel for the defendant and the attorney for the Government, set the case for trial on a day certain, or list it for trial on a weekly or other short-term trial calendar at a place within the judicial district, so as to assure a speedy trial.

2. Any information or indictment charging an individual with the commission of an offense shall be filed within thirty days from the date on which such individual was arrested or served with a summons in connection with such charges. If an individual has been charged with a felony in a district in which no grand jury has been in session during such thirty-day period, the period of time for filing of the indictment shall be extended an additional thirty days.

3. In any case in which a plea of not guilty is entered, the trial of a defendant charged in an information or indictment with the commission of an offense shall commence within seventy days from the filing date (and making public) of the information or indictment, or from the date the defendant has appeared before a judicial officer of the court in which such charge is pending, whichever date last occurs. If a defendant consents in writing to be tried before a magistrate on a complaint, the trial shall commence within seventy days from the date of such consent.

Unless the defendant consents in writing to the contrary, the trial shall not commence less than thirty days from the date on which the defendant first appears through counsel or expressly waives counsel and elects to proceed pro se.

4. If any indictment or information is dismissed upon motion of the defendant, or any charge contained in a complaint filed against an individual is dismissed or otherwise dropped, and thereafter a complaint is filed against such defendant or individual charging him with the same offense or an offense based on the same conduct or arising from the same criminal episode, or an information or indictment is filed charging such defendant with the same offense or an offense based on the same conduct or arising from the same criminal episode, the provisions of subsections (2) and (3) of this section shall be applicable with respect to such subsequent complaint, indictment, or information, as the case may be.

If the defendant is to be tried upon an indictment or information dismissed by a trial court and reinstated following an appeal, the trial shall commence within seventy days from the date the action occasioning the trial becomes final, except that the court retrying the case may extend the period for trial not to exceed one hundred and eighty days from the date the action occasioning the trial becomes final if the unavailability of witnesses or other factors resulting from the passage of time shall make trial within seventy days impractical. The periods of delay enumerated in section 3161(h) are excluded in computing

the time limitations specified in this section. The sanctions of section 3162 of the act apply to this subsection.

5. If the defendant is to be tried again following a declaration by the trial judge of a mistrial or following an order of such judge for a new trial, the trial shall commence within seventy days from the date the action occasioning the retrial becomes final. If the defendant is to be tried again following an appeal or a collateral attack, the trial shall commence within seventy days from the date the action occasioning the retrial becomes final, except that the court retrying the case may extend the period for retrial not to exceed one hundred and eighty days from the date the action occasioning the retrial becomes final if unavailability of witnesses or other factors resulting from passage of time shall make trial within seventy days impractical. The periods of delay enumerated in section 3161(h) of the act are excluded in computing the time limitations specified in this section. The sanctions of section 3162 apply to this subsection.

6. The following periods of delay shall be excluded in computing the time within which an information or an indictment must be filed, or in computing the time within which the trial of any such offense must commence:

(1) Any period of delay resulting from other proceedings concerning the defendant, including but not limited to--

(A) delay resulting from any proceeding, including any examinations, to determine

the mental competency or physical capacity of the defendant;

(B) delay resulting from any proceeding, including any examination of the defendant, pursuant to section 2902 of title 28, United States Code;

(C) delay resulting from deferral of prosecution pursuant to section 2902 of title 28, United States Code;

(D) delay resulting from trial with respect to other charges against the defendant;

(E) delay resulting from any interlocutory appeal;

(F) delay resulting from any pretrial motion, from the filing of the motion through the conclusion of the hearing on, or other prompt disposition of, such motion;

(G) delay resulting from any proceeding relating to the transfer of a case or the removal of any defendant from another district under the Federal Rules of Criminal Procedure;

(H) delay resulting from transportation of any defendant from another district, or to

and from places of examination or hospitalization, except that any time consumed in excess of ten days from the date an order of removal or an order directing such transportation, and the defendant's arrival at the destination shall be presumed to be unreasonable;

(I) delay resulting from consideration by the court of a proposed plea agreement to be entered into by the defendant and the attorney for the Government; and

(J) delay reasonably attributable to any period, not to exceed thirty days, during which any proceeding concerning the defendant is actually under advisement by the court.

(2) Any period of delay during which prosecution is deferred by the attorney for the Government pursuant to written agreement with the defendant, with the approval of the court, for the purpose of allowing the defendant to demonstrate his good conduct.

(3)(A) Any period of delay resulting from the absence or unavailability of the defendant or an essential witness.

(B) For purposes of subparagraph (A) of this paragraph, a defendant or an essential witness

shall be considered absent when his whereabouts are unknown and, in addition, he is attempting to avoid apprehension or prosecution or his whereabouts cannot be determined by due diligence. For purposes of such subparagraph, a defendant or an essential witness shall be considered unavailable whenever his whereabouts are known but his presence for trial cannot be obtained by due diligence or he resists appearing at or being returned for trial.

(4) Any period of delay resulting from the fact that the defendant is mentally incompetent or physically unable to stand trial.

(5) Any period of delay resulting from the treatment of the defendant pursuant to section 2902 of title 28, United States Code.

(6) If the information or indictment is dismissed upon motion of the attorney for the Government and thereafter a charge is filed against the defendant for the same offense, or any offense required to be joined with that offense, any period of delay from the date the charge was dismissed to the date the time limitation would commence to run as to the subsequent charge had there been no previous charge.

(7) A reasonable period of delay when the defendant is joined for trial with a codefendant as to whom the time for trial has not run and no motion for severance has been granted.

(8) (A) Any period of delay resulting from a continuance granted by any judge on his own motion or at the request of the defendant or his counsel or at the request of the attorney for the Government, if the judge granted such continuance on the basis of his findings that the ends of justice served by taking such action outweigh the best interest of the public and the defendant in a speedy trial. No such period of delay resulting from a continuance granted by the court in accordance with this paragraph shall be excludable under this subsection unless the court sets forth, in the record of the case, either orally or in writing, its reasons for finding that the ends of justice served by the granting of such continuance outweigh the best interests of the public and the defendant in a speedy trial.

(B) The factors, among others, which a judge shall consider in determining whether to grant a continuance under subparagraph (A) of this paragraph in any case are as follows:

(i) Whether the failure to grant such a continuance in the proceeding would be more likely to make a continuation of such proceeding impossible, or result in a miscarriage of justice.

(ii) Whether the case is so unusual or so complex, due to the number of defendants, the nature of the prosecution, or the existence of novel questions of fact or law, that it is unreasonable to expect adequate preparation for pretrial proceedings or for the trial itself within the time limits established by this section.

(iii) Whether, in a case in which arrest precedes indictment, delay in the filing of the indictment is caused because the arrest occurs at a time such that it is unreasonable to expect and filing of the indictment within the period specified in section 3161(b) or because the facts upon which the grand jury must base its determination are unusual or complex.

(iv) Whether the failure to grant such a continuance in a case which, taken as a whole, is not so unusual or so complex as to fall within clause (ii), would deny the

defendant reasonable time to obtain counsel, would unreasonably deny the defendant or the Government continuity of counsel, or would deny counsel for the defendant or the attorney for the Government the reasonable time necessary for effective preparation, taking into account the exercise of due diligence.

(C) No continuance under paragraph (8) (A) of this subsection shall be granted because of general congestion of the court's calendar, or lack of diligent preparation or failure to obtain available witnesses on the part of the attorney for the Government.

7. If trial did not commence within the time limitation specified in section 3161 because the defendant had entered a plea of guilty or nolo contendere subsequently withdrawn to any or all charges in an indictment or information, the defendant shall be deemed indicted with respect to all charges therein contained within the meaning of section 3161 on the day the order permitting withdrawal of the plea becomes final.

8. (1) If the attorney for the Government knows that a person charged with an offense is serving a term of imprisonment in any penal institution, he shall promptly--

(A) undertake to obtain the presence of the prisoner for trial; or

(B) cause a detainer to be filed with the person having custody of the prisoner and request him to so advise the prisoner and to advise the prisoner of his right to demand trial.

(2) . If the person having custody of such prisoner receives a detainer, he shall promptly advise the prisoner of the charge and of the prisoner's right to demand trial. If at any time thereafter the prisoner informs the person having custody that he does demand trial, such person shall cause notice to that effect to be sent promptly to the attorney for the Government who caused the detainer to be filed.

(3) Upon receipt of such notice, the attorney for the Government shall promptly seek to obtain the presence of the prisoner for trial.

(4) When the person having custody of the prisoner receives from the attorney for the Government a properly supported request for temporary custody of such prisoner for trial, the prisoner shall be made available to that attorney for the Government (subject, in cases of interjurisdictional transfer, to any right of the prisoner to contest the legality of his delivery).

IV. Persons Detained or Designated as Being of High Risk

1. The trial or other disposition of cases involving--

(1) a detained person who is being held in detention solely because he is awaiting trial, and

(2) a released person who is awaiting trial and has been designated by the attorney for the Government as being of high risk, shall be accorded priority.

2. The trial of any person described in the above sections shall commence not later than ninety days following the beginning of such continuous detention or designation of high risk by the attorney for the Government. The periods of delay enumerated in section 3161(h) of the act are excluded in computing the time limitation specified in this section.

3. Failure to commence trial of a detainee as specified in subsection (b), through no fault of the accused or his counsel, or failure to commence trial of a designated releasee as specified in subsection (b), through no fault of the attorney for the Government, shall result in the automatic review by the court of the conditions of release. No detainee, as defined in subsection (a), shall be held in custody pending trial after the expiration of such ninety-day period required for the commencement of his trial. A designated releasee, as defined in subsection (a), who is found by the court to have intentionally delayed the trial of his case shall be subject to an order of the court modifying his nonfinancial conditions of release under this title to insure that he shall appear at trial as required.

V. Sanctions

1. If, in the case of any individual against whom a complaint is filed charging such individual with an offense, no indictment or information is filed within the time limit required by section 3161(b) of the act as extended by section 3161(h) of the act such charge against that individual contained in such complaint shall be dismissed or otherwise dropped. In determining whether to dismiss the case with or without prejudice, the court shall consider, among others, each of the following factors: the seriousness of the offense; the facts and circumstances of the case which led to the dismissal; and the impact of a reprosecution on the administration of chapter 18 USC §§ 3161 et seq. and on the administration of justice.

2. If a defendant is not brought to trial within the time limit required by section 3161 (c) as extended by section 3161(h) of the act, the information or indictment shall be dismissed on motion of the defendant. The defendant shall have the burden of proof of supporting such motion but the Government shall have the burden of going forward with the evidence in connection with any exclusion of time under subparagraph 3161(h)(3) of the act. In determining whether to dismiss the case with or without prejudice, the court shall consider, among others, each of the following factors: the seriousness of the offense; the facts and circumstances of the case which led to the dismissal; and the impact of a reprosecution on the administration of the act

and on the administration of justice. Failure of the defendant to move for dismissal prior to trial or entry of a plea of guilty or nolo contendere shall constitute a waiver of the right to dismissal under this section.

In any case in which counsel for the defendant or the attorney for the Government (1) knowingly allows the case to be set for trial without disclosing the fact that a necessary witness would be unavailable for trial; (2) files a motion solely for the purpose of delay which he knows is totally frivolous and without merit; (3) makes a statement for the purpose of obtaining a continuance which he knows to be false and which is material to the granting of a continuance; or (4) otherwise willfully fails to proceed to trial without justification consistent with section 3161 of the act, the court may punish any such counsel or attorney, as follows:

(A) in the case of an appointed defense counsel, by reducing the amount of compensation that otherwise would have been paid to such counsel pursuant to section 3006A of title 18 U.S.C. in an amount not to exceed 25 per centum thereof;

(B) in the case of a counsel retained in connection with the defense of a defendant, by imposing on such counsel a fine of not to exceed 25 per centum of the compensation to which he is entitled in connection with his defense of such defendant;

(C) by imposing on any attorney for the Government a fine of not to exceed \$250;

(D) by denying any such counsel or attorney for the Government the right to practice before the court considering such case for a period of not to exceed ninety days; or

(E) by filing a report with an appropriate committee.

The authority to punish provided for by this subsection shall be in addition to any other authority or power available to such court.

The court shall follow procedures established in the Federal Rules of Criminal Procedure in punishing any counsel or attorney for the Government pursuant to this section.

VI. Summary of Experience Under the Act Within the District

A. Progress toward meeting the permanent time limits

Tables 1 through 4 appended to this Final Plan analyze the experience under the Act within the United States District Court for the District of Nebraska. The period covered by the report includes that time before July 1, 1979 and the time on or after July 1, 1979.

The significant figures appear in the material treating the bringing of defendants to trial. Before July 1, 1979, 108 defendants' cases were analyzed and after that period, 27 matters were analyzed. It is significant that in the columns listing more than 81, more than 101, more than 121 and more than 181, there are only 13 cases.

The Reporter notified the Chief Judge of the District in October, 1979 and again in June of 1980 that he believed that the District was in substantial compliance with the time limits. Questionable cases were discussed with the staff of the Clerk of the Court and with the United States Attorney and at a session of the Planning Committee at the end of June, 1980.

B. Problems Encountered

In a letter to the Chief Judge, the Reporter of the Committee outlined two problems which had been encountered. These are explored in the Appendix B attached to this Plan.

One of the problems, that involving the assignment of the Chief Judge to a lengthy trial in Kansas City, Missouri, and the illness of one of the Judges for the District of Nebraska,

or the manpower situation, was a matter over which there was no control within the District.

The other problem, that dealing with a finding by a presiding judge that waiver of the Act's provisions is in the best interests of justice, has been discussed by the Committee and the results disseminated by the Chief Judge.

C. Incidence of, and reasons for, requests or allowances of extensions of time beyond the district's standards

Incidence of and reasons for delay are analyzed in Table 2 appended to this Plan. Specific cases reported to the Chief Judge are contained in Appendices A and B. Explanations of the problems encountered are contained in each of those appendices.

D. Inadequacy of exclusions

Specific cases reported to the Chief Judge, as outlined in Appendices A and B, indicate the reasons for the delays experienced. Simply stated, the delays do not fit within the categories outlined in the Act.

E. Effect on Criminal Justice Administration

No adverse effect on criminal justice administration has been experienced in the District of Nebraska due to the prevailing time limitations under the Act.

F. Effect on the Civil Calendar

There has not been an adverse effect on the civil calendar due to the compliance with the time limits.

VII. Statement of Procedures and Innovations that have been adopted or will be adopted by the District Court to Expedite the Disposition of Criminal Cases in Accordance with the Speedy Trial Act

A. Changes Adopted by the Court

1. Changes in Court Rules: No changes in the Local Rules of Court have been necessitated by the Speedy Trial Act.

2. Changes in Court Procedures.

(a) Grand Jury. To assure that the United States Attorney can meet the requirements of 18 U.S.C. § 3161(b) regarding the filing of indictments in federal criminal cases, the grand jury will be available every month of the calendar year and, as the need arises, will be convened upon his request.

(b) Transfers under Rule 20, F.R.Crim.P. After a defendant charged in another district has indicated in writing his desire to plead guilty or nolo contendere in this district under Rule 20, F.R.Crim.P., he will be arraigned upon the earliest practicable date following the receipt of the charges and necessary papers in this District by the Clerk of the Court. It will be the duty of the clerk to notify the Court of the receipt of the charges and necessary papers from the district in which the defendant was originally charged. In the absence of unusual circumstances, any appearance of the defendant in this court following receipt of the charges and necessary papers shall occur before a United States District Judge.

(c) Transfers under Rule 40, F.R.Crim.P. As soon as practicable, following the issuance of warrant of removal by a judge or magistrate of this Court, the United States Marshal will remove the defendant to the district in which the charges are pending.

(d) Arraignments In Cases Designated For Trial In Omaha. As provided by the general order of this Court dated October 25, 1975, styled In the Matter of Duties of the United States Magistrate at Omaha, the United States Magistrate shall, unless otherwise ordered by the judge to whom the case is assigned, conduct arraignments on indictment or information in cases designated for trial in Omaha and enter pleas of not guilty. Unless the United States Magistrate is unavailable or it is otherwise ordered, the initial arraignment of the defendant in cases designated for trial in Omaha will be held before the United States Magistrate. If the defendant tenders a plea of guilty or nolo contendere to the charges set forth in the indictment or information pending in this district, unless otherwise directed, the Magistrate shall set the case for acceptance of the plea before a judge on that judge's next scheduled arraignment day. In any event, arraignments shall be set within ten (10) days from the filing date (and making public) of the information or indictment or from the date the defendant was ordered held to answer and has appeared before a judicial officer in this district whichever date last occurs. Upon the written consent of the defendant, the magistrate shall order the preparation of a presentence report on those defendants who have signified at arraignment their desire to plead guilty or nolo contendere.

(e) Trial Settings. Except in unusual circumstances or unless otherwise ordered by the judge to whom the case has been assigned, the judicial officer conducting the arraignment shall set the case for trial upon the earliest practicable date, not to exceed sixty (60) days from the date of the arraignment.

(f) Plea Cutoff Date. Except in exceptional circumstances, the United States Attorney or his representatives will not enter into plea negotiations with counsel for the defendant or the defendant pro se later than seven (7) days prior to the date set for trial.

(g) Separate Jury Panels. The Clerk of the Court shall call sufficient prospective jurors for selection of jurors by each judge from separate jury panels.

(h) Jury Selection. Groupings of cases will be set for a date certain for jury selection. On that date, a jury for each case will be selected from the available panel. It is contemplated that jury selection will normally occur on the first day of the week.

(i) Trial Scheduling. Following the selection of a jury in the individual cases, each case will be set for trial on a date certain and the jurors will be notified to return for jury service in the cases in which they were chosen. It is contemplated that the individual cases will be set for dates certain during the remainder of that week.

(j) Scheduling of Unusual or Complex Cases. Cases of an unusual or a complex nature will be specially set upon a date certain for jury selection and trial. The judge to whom the case has been assigned or the magistrate shall notify the Clerk of the Court when he determines that a case requires a special setting because of its unusual or complex nature.

(k) Incapacity or Unavailability of the Judge to Whom Cases Have Been Assigned. If, by reason of incapacity, unavailability, or involment in criminal cases requiring an inordinate amount of judicial time, it appears that a judge of this Court will be unable to dispose of those criminal cases assigned to him within the limits of the Speedy Trial Act, another judge of this Court will be assigned by the chief judge to those cases in order to achieve compliance with the Act.

(l) Physical or Psychiatric Examinations. Whenever it is possible, a defendant requiring physical or psychiatric examination to determine his ability to stand trial will be referred to a local physician for such examination. The examining physician will be directed to submit his findings to the Court as promptly as possible following that examination. Upon receipt of the physician's report concerning the defendant's physical or mental condition, the case will be set for hearing upon the earliest practicable date.

(m) Motion Practice. In determining excludable time attributable to motion practice as provided by 18 U.S.C. § 3161(h)(1)(g), motions in criminal cases will be deemed submitted as provided by the Local Rules of Court.

B. Changes Adopted by the United States Attorney

At the present time it does not appear that substantial changes must be made in the procedures of the Office of the United States Attorney to achieve compliance with the Act. If and when changes may be necessitated, those changes in procedures will be made and the Committee will be so advised.

C. Changes Adopted by the United States Marshal.

Upon receipt of information concerning the arrest and detention in another district of a defendant charged in this district, the United States Marshal shall promptly advise the United States Magistrate, the United States Attorney and the Clerk of the Court as to (1) the district in which the defendant was arrested, (2) the date of the arrest of the defendant, (3) the name of the judicial officer before whom the defendant appeared, and (4) the amount and conditions of the defendant's bond, if one has been ordered in the district of arrest.

VIII. Additional Resources Needed to Achieve Compliance With the Permanent (1979) Time Limits.

A. Additional Resources Needed on a Permanent Basis

(1) By the Court

(a) Judgeships. If the criminal and civil dockets in the District of Nebraska remain static, no additional judgeships appear necessary at this time to achieve compliance with the ultimate time limits of the Act. However, if the civil docket continues to increase at the present rate, it is entirely possible

that an additional judgeship may be needed. The need for an additional judgeship may be aggravated by the additional demands made by the Speedy Trial Act upon the judicial resources within the District of Nebraska.

(b) United States Magistrate. An additional full-time Magistrate has been authorized for the Court in Lincoln, Nebraska. While the Chief Judge sits in Lincoln, the present full-time Magistrate is located at the principal office of the Clerk of the Court for the District of Nebraska in Omaha, Nebraska.

(c) Supportive Staff. At the present time, no additional supportive staff or training for current members of the staff of the Clerk of the District Court for the United States District Court for the District of Nebraska is needed.

The Clerk of the District Court for the District of Nebraska will continue to monitor the implementation of the Speedy Trial Act within the District and continue to analyze whether there may, at some future time, be a necessity for additional personnel and training for such staff.

IX. Recommendations for Changes in Statutes, Rules, or Administrative Procedures.

A. Statutes

1. Speedy Trial Act. The Planning Committee for the District Court for the District of Nebraska is concerned that, in light of an ever-increasing caseload of civil actions filed within the District, the fixed time limitations of the Speedy Trial Act and the increased motion practice which is not only attributable and will be carried out pursuant

to those time limits will unduly tax limited judicial resources, thus creating a problem in terms of a backlog in civil cases. Perhaps, on a broader scale, the Speedy Trial Act should be rewritten to incorporate the more flexible standards of the Sixth Amendment of the United States Constitution as enunciated in Barker v. Wingo, 407 U.S. 514, 92 S.Ct. 2182, 33 L.Ed.2d 101 (1972). It is the feeling of the Committee that the present complexity of the Speedy Trial Act with its fixed time limits and categorized excludable time periods may create problems in the timely processing of both civil and criminal litigation even in some districts, like Nebraska, which currently are disposing of criminal cases on a prompt basis. By incorporating the balancing standards of the Sixth Amendment, increased motion practice in criminal cases would be avoided. This approach would, of course, require a substantial revision of the Speedy Trial Act.

3. Cases Which Require Separate or Different Time Limits

It is the feeling of the Committee, based on the experience of its members in the District of Nebraska, that cases involving gambling of an interstate nature and cases involving charges of conspiracy to commit crimes usually require more pretrial time in processing than the average federal criminal case. If any federal criminal cases are to be given separate or different time limits as a matter of statutory provision, these classifications should be considered.

2. Changes in Other Statutes. Federal criminal statutes, such as the Dyer Act, which involve activity that is primarily state oriented should be reassessed.

C. Federal Rules of Criminal Procedure. In light of the recent revision of the Federal Rules of Criminal Procedure it is too early to determine the effectiveness of these Rules in the expeditious disposition of federal criminal cases. Therefore, it is impossible to make recommendations concerning changes in the Federal Rules of Criminal Procedure at this time.

X. . Incidence and Length of, Reasons for, and Remedies for Detention Prior to Trial.

Table 3 appended to this Plan analyzes the pretrial detention statistics for the District of Nebraska. It should be noted that during the period of time between July 1, 1979 and December 31, 1979, only two defendants were detained for a period of 91 to 120 days.

The Committee did not explore the reasons for the detention.

VI. Statistics

1. In the twelve months preceding June 28, 1980, 1024 new civil actions were commenced in the United States District Court for the District of Nebraska. At the end of that period, 983 cases were pending. In the twelve month period between July 1, 1978 and July 1, 1979, the total of new cases filed was 876.

The increase of the number of pending cases at the end of the current reporting period is 82.

Several factors are significant in explaining the situation in the United States District Court for the District of Nebraska. First of all, 147 more cases were filed in the court during the most recent reporting period compared with the period between July 1, 1978 and July 1, 1979. Second, the Chief Judge of the United States District Court for the District of Nebraska, the Honorable Warren K. Urbom, has, for approximately seven months been assigned to try a complex criminal matter in Kansas City, Missouri. Third, one judge of the United States District Court was ill during a period of the time between July 1, 1979 and the end of the reporting period.

The Planning Committee does not find that the implementation of the Speedy Trial Act has had a significant or adverse impact on the handling of civil matters within the District of Nebraska.

2. Criminal matters.

The Following statistical material reflects the disposition of criminal matters within the United States District Court for the District of Nebraska.